

(1919) 08 CAL CK 0030**Calcutta High Court****Case No:** None

Mahatap Dasi

APPELLANT

Vs

Madhu Sudan Saha and Another

RESPONDENT

Date of Decision: Aug. 12, 1919**Citation:** 64 Ind. Cas. 712**Hon'ble Judges:** Teunon, J; Abdul Majid, J**Bench:** Division Bench**Judgement**

1. This appeal is directed against an order made by the District Judge of Murshidabad. The suit out of which this appeal arises was clearly of the nature cognizable by Courts of Small Causes and the value of the subject-matter of the suit does not exceed 500 Rupees.
2. A preliminary objection was, therefore, taken that no second appeal lies. That objection is well-founded. On the other hand, it is clear that the proceedings have been wholly misconceived and that the Court which tried the case in the first instance, by virtue of the provisions of Section 16 of the Provincial Small Cause Courts Act, had no jurisdiction to do so. We are entitled in the exercise of our discretion to treat this second appeal preferred to this Court as an application in revision. Treating the appeal as an application in revision, we set aside the orders made in both the Courts below and direct the Court of first instance now to return the plaint to the plaintiff for presentation to the Small Cause Court having jurisdiction in the matter.
3. The defendant in the suit raised this question of jurisdiction and subsequently waived it. We consider that both parties are equally responsible for this misconceived litigation. We, therefore, direct that each party will bear his own costs in all the three Courts.